

RESOLUTION NO. 2003-69

A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING WATER SALE AGREEMENT
BETWEEN WOODBRIDGE IRRIGATION
DISTRICT AND THE CITY OF LODI

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NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the Water Sale Agreement between Woodbridge Irrigation District and the City of Lodi, as shown on Exhibit A attached hereto; and

BE IT FURTHER RESOLVED that said Water Sale Agreement shall be effective from date of execution and shall remain in effect for a term of forty (40) years from said date.

Dated: April 16, 2003

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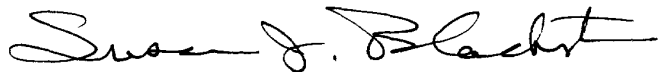
I hereby certify that Resolution No. 2003-69 was passed and adopted by the City Council of the City of Lodi in a regular meeting held April 16, 2003, by the following vote:

AYES: COUNCIL MEMBERS – Beckman, Hansen, Howard, Land, and
Mayor Hitchcock

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON
City Clerk

EXHIBIT A

Lodi Agreement 4/07/03 draft

AGREEMENT FOR PURCHASE OF WATER FROM THE WOODBIDGE IRRIGATION DISTRICT BY THE CITY OF LODI

This Agreement is made and entered into between Woodbridge Irrigation District and the City of Lodi, adjoining entities located within the County of San Joaquin, State of California, this ____ day of _____, 2003.

Background Recitals.

a. The City of Lodi obtains its municipal water supply from wells located within the City, extracting the water from the underground aquifer, which is replenished in part by flows of the Mokelumne River. Lodi desires to acquire a supplemental surface water supply to avoid being wholly dependent upon the wells and the possible impacts of eventual overdraft of the groundwater supply.

b. Woodbridge Irrigation District (District or WID) is an irrigation district that is organized and existing under Division 11 of the California Water Code (Sections 20,500 et seq). The District is located immediately west of the City of Lodi and immediately north of the City of Stockton. The District diverts water from the Mokelumne River at Woodbridge Dam, located in the NE 1/4 of the SE 1/4 of Section 34, Township 4 N, Range 6 E, MDBM, for irrigation of a net area of 19,370.3 acres within a gross area of 40,441.77 acres and located within Townships 2 N, 3 N, 4 N and 5 N, Ranges 5 E, 6 E and 7 E, MDBM.

c. The District diverts its water supply from the Mokelumne River under pre-1914 appropriative rights for the diversion of water up to 300 cubic feet per second (cfs). The District's pre-1914 rights are overlapped by the District License No. 5945 for the appropriation of 300 cfs per annum from February 1 to October 31 for irrigation use, supplemented by License No. 8214 for the diversion of an additional 114.4 cfs from May 1 to August 31 of each year and from November 1 of each year to January 31 of the succeeding year. The combined rights under the two Licenses together with the District's pre-1914 rights are limited to a maximum diversion of 414.4 cfs.

d. The District, following the East Bay Municipal Utility District's (EBMUD) building of the Pardee and Camanche Reservoirs on the Upper Mokelumne River, entered into Agreements with EBMUD in 1938 after Pardee's completion and again in 1965 after the completion of Camanche, which acknowledged the priority of some of the District rights to the EBMUD rights, and under which agreements EBMUD releases a Regulated Base Supply of water each year from Camanche Reservoir for diversion by the District at Woodbridge Dam for irrigation use.

e. The District's demand for water from the Mokelumne River under its water rights has begun to diminish by reason of the District's water conservation programs, including the conversion of field furrow and flood irrigation methods of application to water applied by drip irrigation and micro-sprinklers, which reduce the amount of applied water for crops. There has also been a reduction in the delivery of irrigation water by reason of the number of irrigated acres being reduced

as a result of urbanization of District lands.

f. By reason of the anticipated reductions in water usage within the District, the District has determined that it will have surplus water in certain amounts available under its water entitlements from the Mokelumne River, and the water that would be delivered to the City by this Agreement is surplus to the current needs of the landowners and water users within the District as required by Section 22259 of the Water Code. The District's South Main Canal traverses the westerly portion of the City of Lodi, and the District could deliver water diverted from the Mokelumne River under its water rights to Lodi at a mutually agreeable location along the District Canal System.

g. The water is diverted by the District at Woodbridge Dam, with diversions being facilitated during the irrigation season by the installation of flashboards in the Dam. The flashboards are removed after the end of the irrigation season for Dam maintenance and Dam safety. When the flashboards are in place, water backs up into Lodi Lake and the City's Lodi Park Lake. The Lake is used for fishing, boating and recreational purposes by inhabitants of the City, and its presence during the summer months is an enhancement to the City's Lodi Park Lake. During the periods that the flashboards are not in the Dam, the Lake level is lowered and its utility for fishing, recreation and boating is reduced.

h. Because of its age, it is necessary for the District to replace the existing Woodbridge Diversion Dam in order to provide greater security and protection against dam failure. In doing so, and in reliance on this Agreement, the District intends, subject to any requirements of the Division of Safety of Dams, that the replacement dam structure will be designed and constructed so that water can be impounded behind the dam year round. The estimated cost for replacement of the Dam and appurtenances is approximately \$20,000,000.

i. The City of Lodi desires to contract with the District for the purchase of water from the District for use within the City service area, for which the City will pay on the basis and pursuant to the conditions hereinafter set forth.

NOW, THEREFORE, WOODBRIDGE IRRIGATION DISTRICT (DISTRICT) AND THE CITY OF LODI (CITY) AGREE AS FOLLOWS:

1. Water to be Made Available to City, and Payment. Beginning in the calendar year which first follows the entry of a final judgment confirming the validity of this Agreement pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure, and continuing through the term of this Agreement, the District shall make available to the City out of its Regulated Base Supply under its Agreement with EBMUD, 6,000 acre feet per annum under the terms and conditions herein set forth. In consideration thereof, the City will pay the District annually the sum of ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000.) Payments thereon of \$300,000 quarterly are due and payable in advance beginning on the first day of each calendar quarter, commencing on the first day of the calendar year which follows said entry of a final judgment confirming the validity of this Agreement. Said payments shall be made irrespective of whether the City takes the water made available to it under this Agreement and irrespective of whether the District has water available for delivery to the City, provided that the District shall make its best efforts to provide to the City the amounts of water provided for in this Agreement.

Prior to the commencement of the first full calendar year following the entry of said final judgment, i.e., in the year in which the entry of the final judgment occurs, the City shall make quarterly payments to the District of \$300,000 on the first day of each calendar quarter in that year which follows the entry of the final judgment by more than thirty days, in consideration for which one-fourth of 6,000 acre feet of water shall be made available to the City in the that initial year for each calendar quarter for which such payment is made. Any of such water which is not taken by City in that initial year shall be included as a part of the 18,000 acre feet of carryover water which the City may take at a later date as provided for in paragraph 6.a. hereof.

2. Construction of New Dam by Woodbridge. The District has secured the required permits from the Federal and State agencies and the necessary environmental clearances for the construction of a new Woodbridge Dam to replace the existing Dam together with appurtenant facilities, and the District will proceed with construction as soon as is feasible utilizing the revenues to be paid under this Agreement to finance a portion of the costs of the project.

3. Point of Delivery and Time of Delivery. The District agrees to deliver the water to the City at a point or points on the District's Canal at a mutually agreeable location or locations, which will be fixed when and where the City determines to take the water. The water will be delivered during the months of March through November. The City shall construct at its sole cost and expense the facilities needed to measure and take delivery of water from the District Canal, and the design, construction and operation thereof shall be approved by the District. The City will be responsible for all costs of operation, repair, maintenance and replacement of such facilities. The measurement facilities shall be recalibrated annually at the City's expense as requested by the District and the District shall have a continuing right to test the accuracy of such facilities.

a. The City shall provide the District, by January 1 of each year, an estimate of the maximum amount of water anticipated to be needed by the City during each month of that year from March through October, which scheduling will be subject to the District's approval. The District will

supply such water on said approved monthly schedule pursuant to and as limited by the terms, conditions and limitations of this Agreement; provided that the City shall to the extent that its operations will permit, schedule the taking of as much of its entitlement to water from the District that year prior to July 1 as is feasible, but in any event not less than 3,000 acre feet.

b. At such times as it is possible for the District to deliver water during the remaining months of the year, or to deliver water in excess of 6,000 acre feet during the period from March through October, then by mutual agreement of the parties, delivery of such water to the City may be made by the District. The City shall pay the District \$100 per acre foot for any such additional water delivered to the City.

c. The water furnished by the District under this Agreement shall be used or furnished by the City only for domestic, municipal, industrial, irrigation and other beneficial uses.

d. The District further agrees that it will, during the term of this Agreement at the City's request divert from the Mokelumne River at the District's Woodbridge Dam and wheel and convey through the District's canal system to the City's delivery point, any non-District water acquired by or available to the City, subject to the District having available capacity for that purpose and subject to the City paying a per-acre-foot charge in an amount which the District determines to be its costs for such service. The District's cost for such service in year 2003 would be \$20 per acre-foot.

e. Commencing on January 1 of the seventh year following the year in which execution of this Agreement occurs, the amounts payable to the District under paragraph 1, and the amounts payable to the District under subparagraphs 2.b. and 2.d., shall be increased by two percent per year above the amounts payable during the preceding calendar year. In the event that the annual change in the Consumer Price Index (CPI-W, unadjusted U.S. average) published in December of each year by the United States Bureau of Labor Statistics, commencing in December in the year preceding such seventh year, has increased more than two (2) percent above the December Index of the prior year, the increases in the amounts payable in the ensuing year shall be in the percentage of that increase; provided that any such annual increase shall not exceed five percent (5%).

f. The payments by the City to the District under this Agreement shall be deemed to include the payment during the term of the Agreement of all District groundwater recharge fees on parcels within the City of Lodi which are also located within the boundary of the District.

4. Term of Agreement. (a) This Agreement shall be effective from the date of execution hereof, and shall remain in effect for a term of forty (40) years from said date.

(b) Upon receipt by the District of written notice and request for renewal from the City at least two years in advance of the termination of the Agreement, the District agrees to negotiate with the City for a renewal of this Agreement for an additional forty (40) year term, on terms and conditions that are reasonable and equitable and which are satisfactory to the District.

(c) The District agrees that it will not enter into any agreement during the initial term of this Agreement to provide water to others outside of the District except upon terms which provide that

such supply shall be subordinate to the City's rights to be furnished water under this Agreement (except as the City may otherwise specifically agree to). The parties may contract for the delivery of additional amounts of water that may become available upon terms mutually agreeable to the parties. The City shall have a first right of refusal to purchase any water which the District agrees during the initial term of this Agreement to provide to any other purchaser, upon the same terms and conditions provided in such other proposed sale of water.

5. City Payments to be Made from City's Water System Revenues. The City shall make payments under this Agreement solely from the Revenues of, and as an operating expense of, the Lodi Municipal Water System. The City hereby pledges the Revenues to the payments required hereunder. Nothing herein shall be construed as prohibiting the City from using any other funds and revenues for purposes of satisfying any provisions of this Agreement. So long as the City is in compliance with all of its obligations hereunder, such pledge shall not prevent its application of Revenues to other operating expenses of the Lodi Municipal Water System or, subject to the payment of such operating expenses, to other lawful purposes, or impair the rights of any recipient of Revenues lawfully so applied.

"Revenues" means "all gross income and revenue received or receivable by the City from the ownership and operation of the Lodi Municipal Water System, which gross income and revenue shall be calculated in accordance with generally accepted accounting principles, including all rates, fees, and charges received by the City for water service and connection and hook-up fees and all other income and revenue howsoever derived by the City from the ownership and operation of or arising from the Lodi Municipal Water System, but excluding in all cases any proceeds or taxes and any refundable deposits made to establish credit, federal or state grants, or advances or contributions in aid of construction".

"Lodi Municipal Water System" means "the municipal water system of the City existing on the effective date of this Agreement and all additions, betterments, extensions and improvements thereto hereafter acquired or constructed".

6. City Cooperation in District's Funding of Reconstruction of Woodbridge Dam. The City agrees to cooperate with District in connection with any financing undertaken by District in connection with the reconstruction of the Woodbridge Diversion Dam and to provide to District such certificates, statements and information as District shall reasonably require in connection with such financing, including, without limitation, information relating to the Lodi Municipal Water System and the Revenues, and to provide such information as may be reasonably required in connection with the continuing disclosure undertaking to be entered into by the City pursuant to Rule 15c2-12(b)(5) of the Securities Exchange Commission in connection with the District financing.

7. No Permanent Water Right, and Dry Year Curtailments. The District has determined that the water to be made available annually for delivery to the District pursuant to this Agreement will be surplus to the needs of the District during the term of this Agreement. The parties further agree that no permanent right to the water supplied by the District shall accrue to the City except pursuant to and as limited by the terms of this Agreement.

a. The District agrees that it will deliver up to 6,000 acre feet per annum to the City under this Agreement except to the extent that the District's Regulated Base Supply of 60,000 acre feet under its Agreements with East Bay Municipal Utility District is reduced in dry years by thirty-five (35) percent. In the event of such a reduction, the District may reduce the amount of water to be provided under this Agreement by up to fifty percent (50%). District shall on or about May 1 of each year make a preliminary estimate of whether the City's deliveries may be curtailed that year, and will provide a final estimate of any curtailment on or about July 1. In such event, the City shall only be obligated to take 50% of its estimated delivery before July 1 in that year. There shall be no reduction in the amount of the City's annual payment to the District in such years under paragraph 1.

b. Except for noncompliance with the foregoing provisions of this paragraph, the City shall have no claim for damages or breach arising from the unavailability of surplus water from the District for any cause or condition.

8. Carryover of Entitlements. Unused water may not be carried over by the City from year to year except that the right to receive water may be "banked," as follows:

a. If during the first three years in which the water is available to the City under this Agreement, the City does not take the water or takes less than the amounts which are available, then the City may carry over and have credit for the water not taken, not to exceed a total of 18,000 acre feet, for later delivery during the initial 40-year term of this Agreement, at such times as the District has extra water available as determined solely by the District. There will be no additional charge for the delivery of such banked water.

b. If after said initial three years delivery of water to the City is curtailed under paragraph 5.a. by reason of a dry year condition or by District's maintenance or other District activities, then the City may carry over and have credit for the amount of such curtailment for later delivery at such time(s) as the District has extra water available as determined by the District. Any City credits for curtailed segments of carryover water shall expire at the end of eight (8) years from the end of the period in which the curtailment for that segment of curtailed water occurred. Such credits for the delivery of curtailed carryover water within said eight-year period may extend beyond the termination of this Agreement. There will be no additional charge for the delivery of such banked water.

c. Except as provided in subparagraph a, no credits shall accrue for water that is available to but is unused by the City.

9. Water Quality, Temporary Interruptions, and Responsibility for the Water Beyond Point of Delivery.

a. The water being supplied to the City is raw water diverted from the Mokelumne River, and the character or quality of the water furnished hereunder may vary from time to time. District does not guarantee in any respect the character or quality of the water furnished pursuant to this Agreement, provided that the District shall not apply or use any chemicals within the Canal section

used to deliver water to the City that the City determines to be deleterious to the quality of the water for the uses made by the City of such water.

b. It is agreed that there may be, in addition to shortages of water, temporary discontinuance or reduction of water to be furnished for the City as herein provided, for purposes of investigation, inspection, maintenance, repair or replacement as may be necessary of any of the facilities used by the District for furnishing water to the City. The District agrees to provide the City notice of such temporary discontinuance or reduction of water as soon as such information is available to the District.

c. The City shall hold the District harmless from and defend the District from all claims or expenses on account of damage or claim of damage of any nature whatsoever from which there is legal responsibility, including property damage, personal injury or death, arising out of or connected with the delivery, control, carriage, handling, use, or disposal or distribution of water furnished hereunder beyond the point of delivery of water into the City's system from the District's Canal.

10. Right of Termination for Unacceptable Conditions in Validation Judgment. In the event that the court in the validation action enters a judgment validating the Agreement but upon conditions or restrictions which impose upon either party costs, requirements, obligations, or limitations in their performance of the agreement or upon their operations or property interests which in that party's judgment are unacceptable or otherwise not in the best interests of that party, that party shall have the right to terminate this Agreement, and in that event neither party shall have any further liability or obligation to the other party hereunder.

11. Arrearage in Payments. No water shall be furnished to the City during any period in which the City may be in arrears in payment of charges accruing hereunder after the determination on the amount thereof as above provided. Interest on arrearage in payment shall be charged at a rate of 1-1/2% per month and compounded monthly, commencing 45 days after the due date of the payment.

12. Assignment. The provisions of this contract shall apply to and bind the successors and assigns of the respective parties hereto; but no assignment or transfer of this contract or any part thereof or interest therein by the City shall be valid unless and until approved in writing by the District; and no assignment of the obligation to provide or deliver the water shall be assignable by the District without the consent of the City.

13. Fees and Costs. Any fees, costs or expenses, including attorney fees, administrative costs, and consultant fees, incurred by the District to effect the sale of water to the City, together with CEQA and any other regulatory approval, shall be paid by District and City on a 50/50 basis. The City shall not be required to contribute to any fees or costs incurred by District relating to other issues or disputes that may arise in any of said proceedings not directly relating to City's use of District water. District shall provide to City invoices and accountings of said fees and expenses on a regular basis.

14. City Use of District Rights of Way. The District agrees to cooperate with City and to agree to the City's use of any District right of way along the District's Main Canal needed by the City

for the conveyance or distribution of water it obtains from the District.

15. CEQA. The parties agree that the District will be Lead Agency for purposes of compliance with any requirements of the California Environmental Quality Act pertaining to the execution of this Agreement by each party.

16. Entire Agreement. This Agreement contains the full and entire Agreement of the parties and there are no other conditions, either explicit or implied, nor any warranties or promises other than those contained within the written terms of this Agreement.

17. Time of the Essence. Time is of the essence in the performance of this Agreement.

18. Nonwaiver. The failure of either party to enforce or abide by a term or condition of this Agreement shall not constitute a waiver of that term or condition unless a written Agreement is prepared specifically providing for the waiver or forgiveness of that term and such Agreement is executed by each party hereto.

19. Date of Execution. The date of execution of this Agreement is the date of execution by the party last signing the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the _____ day of _____, 2003.

Attest:

WOODBIDGE IRRIGATION DISTRICT

By _____

Attest:

CITY OF LODI, A MUNICIPAL CORPORATION

By _____
Susan Hitchcock, Mayor

Susan J. Blackston, City Clerk

APPROVED AS TO FORM:

Randall A. Hays, City Attorney